

REMARKS/ARGUMENTS

Claims 1 and 3-19 remain pending in this Application. Applicant has further amended Claims 1 to include the limitation that the space between any object is beyond the horizontal angular extent an individual is able to foveate using attentive vision. Claim 2 remains cancelled. Applicant has inserted the word "object" into Claim 3 which was inadvertently omitted and which clarifies the meaning of such claim. Applicant submits the following as a response to the pending rejections of the Examiner:

CLAIMS OBJECTIONS

A. 35 USC §102(b) Rejections

Claim 1, 3, 4, 6-14, and 16-19 were rejected by the Examiner as being anticipated by Publication entitled "Targets and Backgrounds VI; Characterization, Visualization, and the Detection Process" by Watkins et al. ("Watkins Publication"). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). According to the Examiner, the Watkins Publication teaches all of the limitations of the present invention including the limitation that objects must be sufficiently far enough apart to prevent the use of fovea vision. Applicant respectfully disagrees. As shown in Figure 2 on page 63 of the Watkins Publication, and as described in the Watkins Declaration attached hereto as Exhibit "A" and incorporated by reference for all purposes, the images in the Watkins Publication are close enough to permit an observer to foveate. Specifically, the objects are closer than the 2 degrees of horizontal angular extent allowing the use of attentive vision. This Application is therefore not anticipated by the Watkins Publication and Claims 1, 3, 4, 6-14 and 16-19 should be allowed.

B. 35 USC §103(a) Rejections

1. Claim 5 was rejected by the Examiner under 35 USC §103(a) as being unpatentable over the Watkins Publication in view of US Patent No. 2,168,308 to Ames et al. ("Ames"). When applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

- (A). The claimed invention must be considered as a whole;
- (B). The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C). The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and,
- (D). Reasonable expectation of success is the standard with which obviousness is determined.

Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n. 5, 229 U.S.P.Q. 182, 187 n. 5 (Fed. Cir. 1986).

Objective evidence or secondary consideration such as unexpected results, commercial success, long felt need, failure of others, copying by others, licensing, and skepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987).

According to the Examiner, the Watkins Publication teaches all of the limitations of the present invention except the use of audible sound, unique smell, or specific touch sensation to alert the individual to a correct response. As shown above, the Watkins Publication actually discloses an invention directly contrary to that disclosed herein. Additionally, there is ample evidence in the Declaration of Wendell Watkins that the Application contains unexpected results, and that the Watkins Publication actually represents a failure in light of

the technology of the Application. In view of the foregoing, the Examiner's rejection of Claim 5 should be withdrawn and such claim allowed.

2. Claims 15 was rejected by the Examiner under 35 USC §103(a) as being unpatentable over the Watkins Publication in view of Lawton (US Patent Number 6,213,956). According to the Examiner, since the Watkins Publication discloses all the claim limitations pf the present invention and Lawton discloses the use of such a system for the treatment of dyslexia, it would have been obvious to one skilled in the art to combine the disclosures of the Watkins Publication and Lawton. As shown above, the Watkins Publication teaches a systems wherein the objects are close enough together so that an observer can use attentive vision, something the present invention prohibits, therefore the Examiner's rejection of Claim 15 should be withdrawn and these claims allowed.

Applicant believes that all of the currently pending claims are directed to allowable subject matter. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Wayne Pritchard", written over a horizontal line.

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